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Court : Karnataka

Decided On : May-22-2014

Judge : K.N. Phaneendra

Appeal No. : Criminal Petition No. 165 of 2014

Appellant : N. Lokesh Kumar @ Lokesh

Respondent : State of Karnataka

Judgement :

(Prayer: This Crl.P Is Filed U/S.439 Of Cr.P.C Praying To Enlarge The Petitioner On Bail In Crime No.218/2013 Of Byatarayanapura P.S., Bangalore City, And In S.C.No.1168/2013 On The File Of The Iii Additional City Civil And S.J., Bangalore City, For The Offences Punishable Under Section 341, 302, 324, 506, 120(B), 114 R/W 34 Of Ipc.)

1. Heard the learned counsel for the petitioner and the learned HCGP for the State. Perused the records.

2. The brief factual matrix of the case is that one Ramachandraiah has submitted in First Information Report making allegations that, on the date of incident that was on 14.05.2013, when the complainant's wife and deceased Shanthamma were talking together, at that time, the petitioner and his mother came in a motor cycle and it is alleged that the petitioner indiscriminately assaulted the deceased Shanthamma with a knife on vital parts of the body. In fact, the injured i.e., one

Ramachandraiah also suffered injuries and she disclosed the incident to her husband Ramachandraiah and in turn he lodged the complaint. After thorough enquiry and investigation, the police have submitted the charge sheet against the petitioner and his mother.

3. The learned counsel for the petitioner at the outset submits that the petitioner is entitled for grant of bail because there is no prima-facie material available against him, as there are no eyewitnesses to the incident. The medical report shows that the said deceased was taken to the hospital with a history that she was assaulted by unknown persons. Even the wife of the complainant was also admitted to the hospital and taken treatment with a history that she was also assaulted by some unknown persons. He drew my attention to the medical certificate of the wife of Ramachandraiah by name Savithamma that also shows that she was admitted to the hospital and she did not disclose the name of assaulted persons and a question mark is put in the said document. However, he contended that at this stage, the said Savithamma cannot be depicted as an eyewitness to the incident.

4. Per contra, the learned HCGP for the State contended that not only PW.1 and PW.2 were the eyewitnesses, but CW.6 to CW.9 were also eyewitnesses to the incident. But their statements were recorded subsequently. Even the statement of Savithamma has been recorded on 21.05.2013, after lapse of nearly more than seven days from the date of the incident. The learned counsel arguing raising the several contention that the petitioner is suffering from serious illness and the documents produced before the Court clearly goes to show that he has been suffering from serious illness and he requires a regular treatment by a highly equipped hospital. Though the Jail Authorities taking him to the hospital regularly for treatment, but the same is not sufficient and no improvement in the health of the accused. He has to be alive for the purpose of taking the trial before the Court. On these two main contentions, he request the Court for grant of bail.

5. Insofar as first contention is concerned, though there is some delay in recording the statement of Savithamma, but according to the complainant-Ramachandraiah, the information had been given to him by her immediately after the incident that she was assaulted by the petitioner and that the deceased

Shanthamma was also indiscriminately assaulted by the petitioner at the instigation of the second accused. Though the statement of the Savithramma has been recorded after long lapse of seven days, said factual aspects at the earliest point of the time disclosed by her husband Ramachandraiah who filed the complaint. Though there is some delay in recording the statements of CW.6 to CW.9 who were also the eyewitnesses to the incident, but their statements can't be dubbed as concocted, as the police who have recorded the statements of such eyewitnesses have opportunity to explain the reasons for such delay during the trial. The postmortem report discloses that there are as many as 28 injuries on the deceased. The deceased was taken to the hospital and infact she died even prior to she being taken to the hospital.

6. Looking to the above said circumstances and insofar as contentions of the learned counsel is concerned, in my opinion is not tenable and the prosecution has produced some materials to show the prima-facie case against the petitioner. But there is some force in the second contention. The learned counsel for the petitioner has produced certain documents before the Court which discloses that the petitioner has been suffering from some mental illness, though it cannot be referred to the Psychiatric mental illness or he is suffering from any mental disease. The Doctor attached to National institute of Mental Health and Neuro Sciences, Bangalore and Psychiatry, Neurology and Neurosurgery, Unit-VI has opined that the petitioner suddenly feels giddy and difficulty in breathing. Palpitations, he could not see anything, he feels thirsty, and he does not remember anything and once he gets up he feels that he is surrounded by many people. The Medical Officer, Central Prison Bangalore has written a letter to the Director, NIMHANS, Bangalore stating that the petitioner Lokesh Kumar aged about 35 years was speaking to his co-prisoner at about 11.00 a.m.,. He suddenly stretched his both hands and leg and fell down and he was not conscious for a moment, then he came to normal. Dr.Ravi said he was also with accused during such attack and therefore, for evaluation accused had been sent to NIMHANS for several times. He requires regular treatment. The another document dated 26.10.2013 written to the Chief Superintendent, Central Prison, Bangalore by the Chief Medical Officer, Central Prison also shows that on 09.07.2013, the accused was treated for Pharyngitis in the Prison Hospital for complaints of headache and

syncope, Symptomatic treatment was given in Prison Hospital. Likewise on 12.09.2013, 16.09.2013 and 01.10.2013 also he was treated, he was diagnosed that he was suffering from Vasovagal Syncope and tension headache. The Doctor attached to prison referred the petitioner for opinion of a Cardiologist, for which he was referred to Jayadeva Institute of Cardiology also.

7. The above said documents clearly disclose that since long he has been suffering from such a disease as mentioned above, but no way the Doctor has stated that he requires a treatment from a highly equipped hospital. However, the above said circumstances show that he has been suffering from a mental illness which cannot be thoroughly called as a mental disorder, but due to tension he suffers such problems. The learned Sessions Judge in fact has discussed these aspects in his order. He also came to the conclusion that the petitioner is suffering from such disease. The trial Court also went through the medical report regarding the accused No.1 and also came to the conclusion that the Jail Authorities can give good treatment in the Jail itself. But as could be seen even in spite of treatment, petitioner's mental health appears to have not been improved.

8. The learned counsel appearing before the trial Court cited the order passed by this Court in Criminal Petitions Nos.7696/2012 and 7725/2012, wherein this Court was pleased to grant bail to the petitioner in the said case on the medical ground in order to take treatment in higher centers at their choice. But in the present circumstances, the trial Court has refused to grant bail to the petitioner.

9. Looking to the above said circumstances, in my opinion though prima-facie case is made out against this petitioner by virtue of the statement of the eyewitnesses, but the health problem suffered by the petitioner is for more than one year in the jail. Though the jail authorities have been taking care and all the treatment has been given to the petitioner, but it appears no improvement in the health of the petitioner. In the circumstances in my opinion, at least for a limited period the bail has to be granted to the petitioner to take treatment in the higher medical centres of his choice in order to get evaluated about his health condition by the experts and submit a report to the Court for extension of the bail if necessary.

10. After perusal of the said Medical report, if the Court is of the opinion that he has taken treatment and he requires further treatment, then the Court on the basis of such report pass appropriate orders. Under the above such circumstances, I am of the opinion that the bail petition is to be allowed for a limited period.

Accordingly, the bail petition is partly allowed. The petitioner is enlarged on bail for a limited period of six months on the following conditions.

i) The petitioner shall execute a personal bond for a sum of Rs.1,00,000/- and to furnish two sureties for the likesum to the satisfaction of the trial Court.

ii) The petitioner shall not tamper with the prosecution witnesses.

iii) He shall appear before the Court on all the further hearing dates unless prevented by any genuine cause.

iv) This bail shall be in force for a period of six months. Within that period, the petitioner has to produce the medial report to the Court to pass appropriate further orders.

Accordingly, the petition is disposed of.

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